Mr. Charlton to my own questions disclose that the tendency or temptation of operators of short stature is to feed the rollers from beside the platform guard, which is admittedly a dangerous practice, and that raising the height of the sides of the platform guard would positively have prevented the hands of the operator being brought into dangerous proximity to the point of contact or mesh of the rolls. This precautionary measure has the virtues of simplicity, economy and effectiveness. It is a requirement obvious even to the layman without any mechanical experience. The plaintiff is a short man with a short reach who was, on that account, more liable to feed rubber into his machine from the side of the tray. The defendant's neglect or omission to take a simple precaution so plainly indicated leaves no doubt in my mind that the defendant was in breach of its statutory duty.

On the second point, it was not disputed that the plaintiff's hand was crushed because the machine had no effective guard to prevent his hand being brought into dangerous proximity with the rollers. Consequently, the absence of such a guard was the effective cause of the injury. From where he stood, near the corner of the platform guard, a slight alteration of his stance could easily have placed him in a position to feed the rollers from the side of the tray and this was probably what did happen. He might have been and probably was careless or unthinking in so doing. It was much less tiresome not to have to stretch his arms to their maximum reach, especially as it must have been dull and monotonous in the extreme to have to perform certain set motions hour after hour, and day after day, in a mechanical manner. Therefore no question of contributory negligence arises on the facts, apart from its not being raised in the defence. On this alternative ground of claim I accordingly held the defendant liable.

As regards damages the plaintiff claims by way of special damage a sum of $298 for travelling expenses, which has been agreed. There is a further claim for loss of wages at $120 per month for 18 months, from March 27, 1959 to September 27, 1960, and continuing. He was daily paid worker at $4 a day, plus overtime. On the evidence I think a sum of $96 would fairly represent an average month's income. He ought to have mitigated his losses, but appears to have made no attempt to do so. He might have earned less than his usual wages but he certainly could not have earned nothing at all until now if he had not preferred to remain idle. On this head of claim I would award him, in round figures, the sum of $2,000. As regards general damages, the loss of effective use of his hand, as a direct result of his actual injuries is no greater and no less than his present disability after amputation. I have given careful consideration to his past employment, his present circumstances and his future prospects of earning his living. For pain and suffering, reduction of future earnings, disability and loss of amenities, I think that, having regard to all the circumstances, a sum of $10,000 is a fair and proper compensation. There will be judgment accordingly in favour of the plaintiff for $12,298 and costs.

Judgments for the plaintiff.

Solicitors: *Sen & Lim; Donaldson & Burkinshaw.*

LIAN BOON KHIAM & ORS. v. REGINA

[R. Cr. J. (Rose C.J.) August 31, 1961]

[Singapore — Criminal Revision No. 8 of 1961]

Criminal Law and Procedure — Preliminary Inquiry — Order of discharge recorded by Magistrate — Whether order can be varied — Criminal Procedure Code, (Cap. 132), s.139(1).

In matters which come before a Magistrate by way of a preliminary inquiry, section 139(1) of the Criminal Procedure Code leaves him with no discretion but to record an order of discharge whenever he finds that there are not sufficient grounds for committing the accused for trial. Such an order of discharge cannot be revised by the High Court so as to substitute an order of acquittal in its place.

CRIMINAL REVISION.

S. K. Lee for the petitioners.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Cur. Adv. Vult.

Rose C.J.: This is an application in revision. The three petitioners were charged before the 9th Magistrate's Court with voluntarily causing grievous hurt for the purpose of extortion contra section 331 of the Penal Code.

After four adjournments, made at the request of the prosecution, the matter was eventually disposed of on the 10th of June, 1961 when the charge against the petitioners was withdrawn and the learned Magistrate recorded an order of discharge not amounting to an acquittal.

The petitioners now ask that I should exercise my powers of revision on their behalf under section 311 of the Criminal Procedure Code and record an acquittal in place of the order of discharge.

It is no doubt the case that in summary trials before a Magistrate or in prosecutions before an Assize Court or a District Court a discretion is vested in the Court as to whether to record an order of discharge or one of acquittal. Moreover it is the general practice, which has

been approved in more than one judicial decision in the Courts of the Federation and in Singapore, to record an order of acquittal in such a case unless there are special circumstances favouring the alternative course. As regards, however, matters which come before a Magistrate by way of a Preliminary Inquiry it would seem that the Legislature has vested in the Magistrate no such discretion.

Section 139(1) of the Criminal Procedure Code reads as follows:—

"When the evidence in support of the prosecution has been taken, the Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him."

Learned counsel for the petitioners concedes that the order of the learned Magistrate did not offend against this sub-section but invites me to invoke the "paternal and supervisory" jurisdiction that is vested in me by section 311 of the Criminal Procedure Code to vary the learned Magistrate's order if I am satisfied that hardship flows therefrom.

In effect, I am invited to reverse an order of the Magistrate which he is by statute impelled to make, and to substitute an order which he is not empowered to make. The Legislature has thought fit to distinguish between the procedures to be adopted in Preliminary Inquiries and those in Summary Trials before a Magistrate or Prosecutions before the Assize or District Courts. If I were to accede to this invitation in the exercise of my powers of revision, it would seem that I would not be revising but legislating. And that is not the province of a Court.

The petition is therefore refused.

Petition refused.

YAP CHOON KONG & ORS. v. THE RETURNING OFFICER, KLUANG & ORS.

[O.C.J. (Adams J.) September 2, 1961]

[J.B. — Election Petition No. 4 of 1961]

Election Petition — Election Offences Ordinance, 1954, s.32 — Local Government Elections Act, 1960, 2nd Schedule — Constitution of the Town Council of Kluang, art. 5(d) — Disqualification under — Must be based on reg. 11(1) of Local Government (Conduct of Elections) Regulations, 1960.

This was a petition under section 32 of the Elections Offences Ordinance, 1954, to determine whether the persons returned to certain wards in the Township of Kluang were duly elected. It was argued for the petitioners that (1) the Election Officer was wrong in law in disqualifying them under paragraph 2(g) of the Second Schedule to the Local Government Elections Act, 1960, and (2) the respondents who were returned unopposed were at the time of their elections persons disqualified under Article 5(d) of the Constitution of the Town Council of Kluang.

Held: (1) since there has been no non-compliance with the provisions of any written law there is no remedy by way of an election petition open to the petitioners;

(2) an objection to be valid under Article 5(d) of the Constitution of the Town Council of Kluang must be based on the grounds set out in Regulation 11(1) of the Local Government (Conduct of Elections) Regulations, 1960.

Case referred to:—

(1) *Re the Election Petition of Cheah Seng Teck* [1958] M.L.J. 275 at p. 278.

ELECTION PETITION.

S. K. Lee for the petitioners.

Dato D. C. Jackson (Legal Adviser, Johore) for the Returning Officer.

R. S. Boswell for the other 3 respondents.

Cur. Adv. Vult.

Adams J.: This is a petition brought by Yap Choon Kong of 21, Jalan Pasar, Kluang, Benedict DeCosta of 88 Jalan Mengkibol, Kluang, and Chiam Teck Kwee of 196-6, Jalan Mersing, Kluang, under section 32 of the Election Offences Ordinance, 1954, to determine whether the persons returned as being duly elected to the Bakar Sampah Ward, the Yap Tau Sah Ward, and the Yap Tau Sah Timah Ward in Township of Kluang were duly elected. Mr. S. K. Lee appears for all three petitioners, Mr. Boswell for the respondents, and the Hon'ble Dato Jackson, Legal Adviser, Johore, for the Returning Officer.

There are two grounds upon which the petition is based, firstly, that the petitioners are not disqualified from being Councillors under para. 2(g) of Second Schedule to the Local Government Elections Act, 1960, and that the decision of the Returning Officer in so disqualifying them was wrong in law and affected the result of the Election and secondly, that the respondents who were returned unopposed were at the time of their elections persons disqualified under Article 5(d) of the Constitution of the Town Council of Kluang.

The facts are in no way in dispute. The petitioners are all members of the Labour Party, and the respondents are all members of the Alliance Party who sought to contest the Kluang Town Council Elections in the Wards abovementioned at the Local Government Elections which were due to take place in Kluang on the 24th May, 1961. The three petitioners are all civilian employees employed by Her Britannic Majesty's Armed Forces who are present in the Federation of Malaya as a result of a treaty made by the Government of the Federation of Malaya and Her Britannic Majesty's Government. They are Federal citizens, and there is nothing in their terms of employment by Her Britannic Majesty's Armed Forces prohibiting the petitioners from contesting such elections as these and indeed the petitioners had the necessary permission from their employer so to do.

The petitioners and the respondents duly attended at the proper place on the 24th April, 1961 for the purpose of filing their nomination papers, which they duly did. When nominations